

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

ROBERT J. VINOKUROW,

NOV 26 1990

Plaintiff-Appellant,

v

No. 117362

ALLSTATE INSURANCE COMPANY, an Illinois
Corporation,

Defendant-Appellee.

Before: McDonald, P.J., and Hood and Reilly, JJ.

PER CURIAM.

In this action seeking recovery of no-fault personal injury protection benefits, a jury verdict for defendant was entered based on the finding that plaintiff's injuries did not arise out of the ownership, maintenance, or use of a motor vehicle as a motor vehicle. Plaintiff appeals as of right from the trial court's denial of his motion for a directed verdict on the issue of medical expense benefits. We affirm.

Plaintiff first argues that the reasonableness of his medical expenses was not an issue for the jury, and thus the trial court erred in denying his directed verdict motion. Plaintiff relies exclusively on this court's decision in Nasser v Auto Club Insurance Association, 169 Mich App 182; 425 NW2d 762 (1988), that the reasonableness of medical expenses cannot be used as a defense to liability. However, our Supreme Court reversed this decision, holding that the reasonableness and necessity of the medical expenses are "necessary elements of a complainant's recovery, and thus renders their absence a defense to the insurer's liability." Nasser v Auto Club Insurance Association, 435 Mich 33, 49; NW2d (1990). Although the trial court did not have the benefit of the Supreme Court's decision, we conclude that its denial of plaintiff's motion was correct.

Plaintiff also claims that he was entitled to recover, 12% penalty interest and attorney fees pursuant to MCL 500.3142(3); MSA 28.13142(3), for defendant's unreasonable refusal to pay his medical expenses. However, since plaintiff was unsuccessful on his underlying claim for medical expense benefits, he is not entitled to either attorney fees or interest.

Affirmed.

/s/ Gary R. McDonald
/s/ Harold Hood
/s/ Maureen P. Reilly